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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/595,063	01/26/2006	Henry Buse	Q92726	2042
23373 7590 07/29/2008 SUGHRUE MION, PLLC 2100 PENNSYLVANIA AVENUE, N.W. SUITE 800 WASHINGTON, DC 20037				
EXAMINER				
AGERS, JULIE A				
ART UNIT		PAPER NUMBER		
4177				
MAIL DATE		DELIVERY MODE		
07/29/2008		PAPER		

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

### Office Action Summary

**Application No.**

10/595,063

**Applicant(s)**

BUSE, HENRY

**Examiner**

JULIUS AGERS

**Art Unit**

4177

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 26 January 2006.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 18-33 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 18-33 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 1/26/2006 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some \* c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-8508)  
Paper No(s)/Mail Date See Continuation Sheet
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: \_\_\_\_\_

Continuation of Attachment(s) 3). Information Disclosure Statement(s) (PTO/SB/08), Paper No(s)/Mail Date :1/26/2006, 9/13/2006, 7/26/2007.

**DETAILED ACTION**

***Claim Rejections - 35 USC § 112***

1. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

2. Claims 19, 22, 27, 31 and 33 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. The phrase "and/or" used by applicant is indefinite, examiner assumes "or".

***Claim Rejections - 35 USC § 102***

3. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

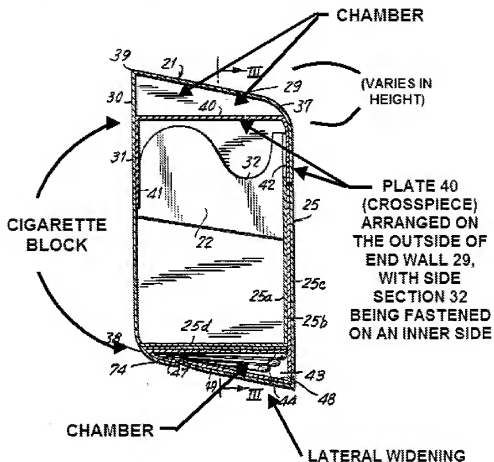
(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

4. Claims 18-33 are rejected under 35 U.S.C. 102(b) as being anticipated by Erlich (US 4,015,769).
5. Regarding claim 18, Erlich discloses a hinge-lid box ("cigarette box", abstract) for a cigarette block or other block-shaped articles as pack contents, comprising a box part ("box body" 20, fig. 1), lid ("hinged closure" 21, fig. 1) which are connected to one another in a pivotable manner by a transverse linear articulation in the region of a box rear wall ("rear wall" 24, fig. 1), on the one hand, and of a lid rear wall ("wall" 28, fig. 1), on the other hand, the box part comprising a box front wall ("front wall" 23, fig. 1), box rear wall (24, fig. 1), box side walls ("side walls" 25 and 26, figs. 1,4) and base wall

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("extension" 49, fig. 2) and the lid (21, fig. 2) comprising a lid front wall ("wall" 27, fig. 1), lid rear wall (28, fig. 1), lid side walls ("wall" 30 and "corner" 37, fig. 2) and end wall ("wall" 29, fig. 2), there being formed above the pack contents a free chamber (see reference picture A) which is bounded at least by the end wall (29, fig. 2), the lid front wall (27, fig. 1) and the lid rear wall (28, fig. 1), characterized in that the end wall (29, fig. 2) runs at a non-uniform distance from the pack contents at least in one sub-region such that the chamber varies in height along the width of the hinge-lid pack (refer to figs. 1 and 2).

Reference Picture A



6. Regarding claim 19, Erlich discloses the hinge-lid box characterized in that the end wall (29, fig. 2) comprises a plurality of differently configured or shaped regions, namely at least two side sections ("cutouts" 32 and 33, fig. 1) that are directed toward the lid side walls (30 and 37, fig. 2), and a central section ("cutout" 34, fig. 1), with the side sections (32 and 33), on the one hand, and the central section (34), on the other hand, having different shapes and/or located in different planes.

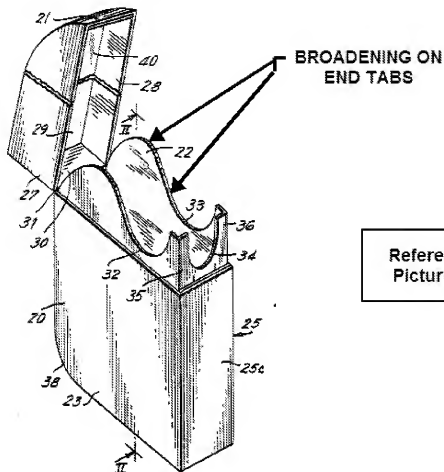
7. Regarding claims 20 and 21, Erlich discloses the hinge-lid box characterized in that the end wall (29, fig. 2) in its lateral regions has an arcuate configuration (see fig. 1), and the side sections (32 and 33, fig. 1) are configured as extensions of end tabs of inner lid side tabs ("extensions" 41 and 42, fig. 2).

8. Regarding claim 22, Erlich discloses the box characterized in that the end wall (29, fig. 2) is of at least double-layered design in the central section (34, fig. 1), specifically by virtue of a crosspiece ("plate" 40, fig. 2) being arranged on the outside of end wall and/or base wall, with end regions of the end tabs (side sections 32 and 33) being fastened on an inner side of the crosspiece (see reference picture A).

9. Regarding claim 23, Erlich discloses the box with an end wall (29, fig. 2) having rounded side sections and a planar, transverse central section, with the side sections (32 and 33, fig. 1) being of at least partially elliptical design with a pronounced curvature in the region of the side walls (25 and 26, fig. 1).

10. Regarding claim 24, Erlich discloses the box with a lid front wall (27, fig. 1) and lid rear wall (28, fig. 1) conforming to the contour of the end wall (29, fig. 2) and base wall ("extension" 49, fig. 2) and are connected to one another in the central region by the crosspiece (40, fig. 2).

11. Regarding claim 25, Erlich discloses the box characterized in that the end wall (29, fig. 1) in sub-regions outside the crosspiece (40, fig. 2) is supported on a free edge of the lid front wall (27, fig. 1) and lid rear wall (28, fig. 1) by means of a broadening (see reference picture B) provided on the end tabs (side sections 32 and 33, fig. 1).



Reference  
Picture B

12. Regarding claim 26, Erlich discloses the box characterized in that, in addition to the chamber formed above the cigarette block, a free chamber ("compartment" 43, fig. 2,4) is formed below the pack contents on the base side (see reference picture A), with a base wall (49, fig. 2) as well as box front wall (23, fig. 1) and box rear wall (24, fig. 1) being configured analogously to end wall (29, fig. 2) and/or lid front wall (27, fig. 1) and lid rear wall (28, fig. 1) in order to delimit the base-side chamber ("compartment" 43, fig. 2).
13. Regarding claim 27, Erlich discloses the box characterized in that the end wall (29, fig. 2) comprises the two oblique side sections (32 and 33, fig. 1) and the horizontal



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or transverse central section (34, fig. 1), the oblique side sections (32 and 33, fig. 1) adjoining the side walls (25 and 26, figs. 1,4) on the one hand, and the central section (34, fig. 1) on the other hand, at an obtuse angle in each case.

14. Regarding claim 28, Erlich discloses a chamber (see reference picture A), which is formed at least above the cigarette block, that is of trapezoidal design in cross section.

15. Regarding claim 29, Erlich discloses the end wall (29, fig. 2) as a whole, namely over its entire width, is directed obliquely in a roof-like shape and has a planar design.

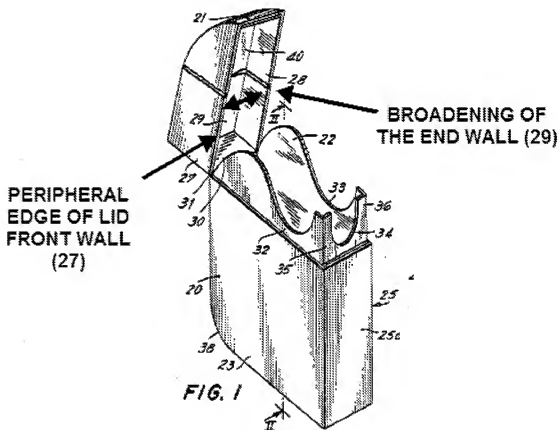
16. Regarding claim 30, Erlich discloses the end tabs (32 and 33, fig. 1) are extended beyond the cigarette block in the plane of the lid side wall (30, fig. 1) on at least one side and can be folded over into the oblique plane of the end wall (29, fig. 1) at a distance above the cigarette block to form a peripheral edge ("upper corner" 39, fig. 2) and butt against said end wall (29, fig. 1) on the inside.

17. Regarding claim 31, Erlich discloses the base wall (49, fig. 2) spaced apart from the pack contents by a smaller distance in a preferably central sub-region than in lateral regions such that the chamber (43, fig. 2) has lateral widenings (see reference picture A).

18. Regarding claim 32, Erlich discloses end tabs (32 and 33, fig. 1) that are extended beyond the cigarette block in the plane of the lid side wall (30, fig. 1), and are folded at an acute angle, and directed obliquely downward, in the region of the peripheral edge (39, fig. 2), and have a horizontally folded end leg ("angular section" 35, col. 2, lines 38-39, fig. 1) on the inside of the crosspiece (40, fig. 2).

19. Regarding claim 33, Erlich discloses the end tabs (32 and 33, fig. 1) of the lid side walls (30 and 37, fig. 2) butt against free peripheral edges of the lid front wall (27, fig. 1) and lid rear wall (28, fig. 1), specifically by way of a broadening (see reference picture C) of the end wall (29, fig. 1).

### Reference Picture C



## Conclusion

20. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Prussack (US 2,956,722), Morton et al. (US 3,207,416), German

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(US 3,752,307), Focke et al. (US 5,301,804), Pham (US 5,478,011), Focke et al. (US 5,513,748), Focke et al. (US 5,806,671), Draghetti et al. (US 5,833,060), Leong (US 5,878,875), Focke et al. (US 5,904,244), Focke et al. (US 5,921,384), Focke et al. (US-2001/0004967), Focke et al. (US 6,343,691), Focke et al. (US 6,360,943), Focke et al. (6,412,630), Focke et al. (US-2003/0153446).

Any inquiry concerning this communication or earlier communications from the examiner should be directed to JULIUS AGERS whose telephone number is (571)270-5423. The examiner can normally be reached on Monday - Friday, EST 8:00 am - 5 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Quang Thanh can be reached on 571-272-4982. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/J. A./  
Examiner, Art Unit 4177

/Quang D. Thanh/  
Supervisory Patent Examiner, Art  
Unit 4177